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Office of the Clerk
Court of Criminal Appeals
P.O. Box 12308
Capital Station
Austin, Texas 78711
ATTN: Deanna Williamson

RE: *Ex parte Richard Mark Bowman, No. PD-0208-16*

Dear Ms. Williamson:

Please file this supplemental letter of authority to Appellant's motion for rehearing in the above-styled and numbered matter.

This Court should grant rehearing because the majority's holding that the trial court was not free to disbelieve trial counsel's claimed memory loss as to whether he obtained Officer Lindsay's payroll records conflicts with this Court's decision in *State v. Guerrero*, 400 S.W.3d 576 (Tex.Crim.App. 2013). In *Guerrero*, this Court made it clear that, "In a post-conviction writ application filed pursuant to Art. 11.072 habeas proceeding, *the trial judge is the sole finder of fact*. The highly deferential *Guzman*¹ standard of review controls in such cases, and under this standard, the appellate court affords almost total deference to a trial court's factual findings when supported by the record, especially when those findings are based upon credibility and demeanor." *Id.* at 583 (emphasis added).

Rehearing is also required because the majority's holding conflicts with this Court's decision in *Ex parte Garcia*, 353 S.W.3d 785, 787-88 (Tex.Crim.App. 2011), that, in an article 11.072 habeas proceeding, "the

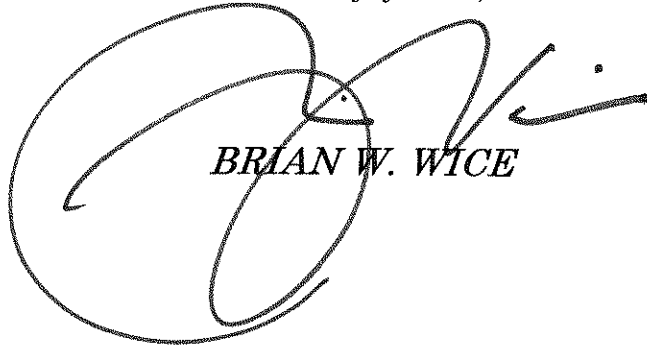
¹ *Guzman v. State*, 955 S.W.2d 85 (Tex.Crim.App. 1997).

trial judge is the sole finder of fact.... Because the court of appeals and this Court are truly appellate courts in an article 11.072 context, *[t]here is less leeway in an article 11.072 context to disregard the findings of a trial court.*" (emphasis added).

For these reasons, in addition to those set out in Appellant's motion for rehearing, this Court should grant rehearing; vacate its opinion; and dismiss the State's PDR as improvidently granted, affirm the judgment of the First Court of Appeals, or set this matter for oral argument.

Pursuant to Tex. R. App. P. 9.5(d), copies of this letter were served on co-counsel and opposing counsel by e-filing on July 10, 2017.

Sincerely yours,

A handwritten signature in black ink, appearing to read "B. Wice", is written over the typed name. The signature is stylized with a large loop and a horizontal stroke.

BRIAN W. WICE

BWW:dje